**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4929 of 1987**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**BHARTIBEN C PATEL - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 3 - Respondent(s)**

==========

**Appearance :**
MR DIPAK C RAVAL for Petitioner(s) : 1,
Ms HANSA PUNANI, AGP for Respondent(s) : 1 - 3.
MR MS RAO for Respondent(s) : 4,

==========

**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**Date : 21/06/2006**
**ORAL JUDGMENT**

In this petition under Article 226 of the Constitution, petitioner Smt. Bhartiben C Patel, who was serving as a secondary school teacher and who took premature voluntary retirement with effect from 2.3.1982 after completion of 20 years' service, had

prayed for the following reliefs :-

> “(A) To fix the petitioner's final pension, and gratuity, and pay the said amounts forthwith together with twelve percent interest.
>
> (B) To finalize the amount of the petitioner's General Provident Fund Account and pay the same forthwith, together with twelve percent interest.
>
> (C) To pay the petitioner the amount of medical allowance outstanding since April 1983, with twelve percent interest.
>
> (D) To pay the petitioner, the arrears of salary, pursuant to the revision of pay as per the Revision of Pay Rules, 1974, and the special revision of pay granted as pointed out in paragraph 5, with twelve percent interest thereon.”

2. At the hearing of the petition today, it is brought to the notice of the Court that original petitioner Smt. Bhartiben C Patel has expired during pendency of the petition on 1.12.1995. Mr Raval for the petitioner points out that Ishvarbhai S Patel and Kalpanaben R Patel, the heirs of the deceased petitioner had filed Civil Application No. 85 of 1996

for being brought on record as the legal heirs of the deceased petitioner and the same was granted on 29.4.1997. In support of the same, reliance is placed on the status report dated 21.11.2000.

3. It appears from the aforesaid status report that the Civil Application was “disposed of” on 29.4.1997. The order dated 29.4.1997 is not produced before the Court. But even proceeding on the basis that the Civil Application filed by the abovenamed persons was allowed, but the cause title of the petition is yet not amended, even then having gone through the affidavit in reply dated 12.2.2002 of Mr BR Parmar, Administrative Officer, NFC School, Gandhinagar, it appears that none of the prayers deserves to be granted at this stage. It is stated that the petitioner had not given the three months' advance notice before seeking voluntary retirement and that otherwise also the petitioner was on leave without pay for 292 days, which period was required to be regularized by the State of Gujarat and that after the said period was regularized as leave without pay, the pension case of the petitioner was prepared and submitted to the Accountant General, Ahmedabad on 27.11.1987. The pension case was ultimately finalized on 9.1.1991 and the petitioner was intimated that her pension was fixed at the rate of Rs.227/- with effect from 3.3.1982. The gratuity amount to the tune of Rs.1661.25 was also ordered to

be paid to the petitioner.

As regards the petitioner's claim for GPF, an amount of Rs.15,543/- was paid to the petitioner vide order dated 22.11.1985.

In view of the said developments, prayers (A) and (B) would not survive.

4. As far as prayer (C) for medical allowance is concerned, it is pointed out in the reply affidavit that the medical allowance of Rs.15 was required to be paid to those employees, who opted for drawal of medical allowance in cash from 1.4.1982, but the petitioner retired from 2.3.1982 and, therefore, she was not eligible for the same.

5. As regards prayer (D), it is pointed out that the benefits claimed by the petitioner on the basis of the Government Resolution dated 23.7.1981 were not payable to the petitioner because the benefits were to be given to the employees of NFCI (National Fitness Corps Instructor) of the Central Government, but the petitioner was a non-government teacher and, therefore, she was not entitled to get increments payable to the employees of the NFCI of the Central Government.

6. In view of the above, none of the prayers

made in the original petition is required to be granted. It is true that there was delay in making payments. As far as the delay in payment of GPF amount is concerned, ordinarily such amounts are paid alongwith interest till the date of payment, as per the statement being made by Mr MS Rao, learned standing counsel for the Accountant General.

As regards the delay in fixation of pension, the delay was on account of the original petitioner not having got at the relevant time the period of 292 days regularized as leave without pay. Moreover, when the original petitioner i.e. the lady employee has expired, the Court is not inclined to consider the claim of her children for interest on the delayed payment of pension and gratuity.

7. In view of the above discussion, the petition deserves to be dismissed. In case the petitioner was not paid the GPF amounts alongwith interest till the date of payment, it will be open to the petitioner to pursue the matter with the Accountant General.

8. Subject to the above clarification, the petition is dismissed.

Rule is discharged.

[M.S. SHAH, J.]

sundar/-